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97TH CONGRESS, 2d Session | SENATE | REPORT No. 97-482

AMENDMENT OF THE MILITARY PERSONNEL AND CIVILIAN EMPLOYEES' CLAIMS ACT PROVIDING FOR AN INCREASE FROM $15,000 TO $25,000 IN THE MAXIMUM AMOUNT THAT THE UNITED STATES MAY PAY IN SETTLEMENT OF A CLAIM

JUNE 24 (legislative day, JUNE 8), 1982
Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1739]

The Committee on the Judiciary, to which was referred the bill (S. 1739) to amend the Military Personnel and Civilian Employees' Claims Act of 1964, to increase the limit on payment for losses of personal property incident to Federal service from $15,000 to $25,000, having considered the same, reports favorably thereon and recommends that the bill as amended do pass.

PURPOSE AND SUMMARY

The purpose of the proposed legislation is to amend sections 3(a)(1) and 3(b)(1) of the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 241 (a)(1) and (b)(1)). Each of these subsections would be amended to increase the existing maximum limit from $15,000 to $25,000.

At a hearing on October 19, 1981, before the Subcommittee on Agency Administration, testimony in support of the legislation was heard from the Department of Defense, the Department of State, and the Coast Guard. In addition, a legislative proposal recommending an identical increase in the claims limit was received from the Department of the Air Force on October 16, 1981. This proposal states that it is a part of the Department of Defense legislative program for the 97th Congress and that the Office of Management and Budget has no objection to its presentation for the consideration of the Congress.

By raising the maximum claims limit from $15,000 to $25,000, this legislation serves to maintain the level of protection that Congress has previously considered appropriate. The last increase in the limit occurred in October 1974. Since that time the general inflationary trend

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has reduced the value of the $15,000 limit to the point that at least $25,000 is needed to match the purchasing power which $15,000 had in 1974.

One method of calculating increased costs of repairing and replacing property of the type whose loss or damage may give use to claims under the Act is to use the Consumer Price Index for all Urban Consumers (CPI–U). According to the U.S. Bureau of Labor Statistics, the CPI–U was 153.0 in October 1974 and was 279.3 in September 1981, an 82.5% increase. This would make the value of $15,000 in October 1974 purchasing power only $8,217 in September 1981. Put another way, it would take $27,382 in September 1981 to equal $15,000 in October 1974.

A more appropriate comparison is achieved from use of the CPI–U with housing and energy costs excluded, since these are not items which are involved in claims under the Act. Using that standard, the index in October 1974 was 150.2 and in September 1981 was 247.7, a 64.9% increase. This would make the valve of $15,000 in October 1974 purchasing power only $9,095 in September 1981. Thus it would take $24,737 in September 1981 to equal $15,000 in October 1974.

The increase from $15,000 to $25,000 in the proposed legislation is fully justified by this analysis of inflationary trends since October 1974. A $25,000 limit is more in line with the current value of property and current repair costs. Thus, this increase is not a new benefit but rather maintenance of the level of protection previously considered appropriate by the Congress. As was reflected in the reports accompanying the 1974 increase, we believe that a $25,000 level of protection is appropriate as a matter of fairness to both military personnel and civilian employees of the United States. It is important to assure our personnel who move not at their choice, but at the call of the Government they serve, that they will not have to face catastrophic losses without adequate compensation. As to military personnel in particular, this protection is important as an inducement for entering the All Volunteer Force and, more importantly, for remaining in the military service for a career. The benefit which military personnel will receive from this additional protection far outweighs the relatively modest cost of the increase.

The need for an increase from $15,000 to $25,000 is also indicated by the number of claims which have been adjudicated as payable in an amount over $15,000 during fiscal years 1980 and 1981. The following charts reflect those statistics.

Military personnel and Civilian Employees' Claims Act claims adjudicated in excess of $15,000

Fiscal year 1980:	
Air Force	16
Army	3
Navy	61
Marine Corps	2
Total	82
Fiscal year 1981:	
Air Force	36
Army	17
Navy	27
Marine Corps	2
Total	82

While the numbers of claims are not large, the impact of such catastrophic losses on the individuals affected is enormous. When one looks at the fact that the additional cost of compensating the 82 Department of Defense personnel who had claims adjudicated in excess of $15,000 in Fiscal Year 1980 was just $512,172, this additional protection for the hundreds of thousands of married personnel in the Department of Defense (those with property likely to be valued at over $15,000) becomes very inexpensive. The experience in Fiscal Year 1981 is quite similar. The additional cost of compensating the 82 Department of Defense personnel who had claims adjudicated in excess of $15,000 would have been just $464,275.

To require military personnel and civilian employees of the Government to risk losses of their property incident to their service without adequate protection is inequitable. The Committee believes that it is important that Government personnel have a guarantee of reasonable recompense for losses suffered as a result of government directed moves.

Legislative History

Until the creation of the original Military Personnel Claims Act in 1945, statutory authority to settle claims resulting from the losses of personal property by military personnel was obsolete and insufficient. The Military Personnel Claims Act repealed the scattered provisions, consolidated the authority and updated the law to provide compensation for military personnel and civilian employees of the War Department in the event of "damage to or loss, destruction, capture or abandonment of personal property occurring incident to their service." Property was required to be "reasonable, useful, necessary and proper" for compensation to be paid. In 1952, the first compensation ceiling was added to the Act, limiting claims to no more than $2,500.

The Military Personnel and Civilian Employees' Claims Act originated as a bill, H.R. 6910, which was reported by the House Judiciary Committee in the 88th Congress (H.R. Rep. No. 460, 88th Cong., 1st Sess. (1963)). That bill was introduced as recommended in an executive communication sent to the Congress by the Federal Aviation Agency. It was stated in the communication that in 1952 the Civil Aeronautics Administration, the predecessor to the Federal Aviation Agency, was faced with the problem of obtaining relief for a group of Government employees who suffered personal property losses when Government-owned quarters on Wake Island were destroyed or damaged by a typhoon. The losses suffered by these employees served to emphasize the total lack of authority on the part of the employing agencies in that case to make administrative settlement in an instance where military personnel or civilian employees of the military departments could have been compensated in accordance with the provisions of the Military Personnel Claims Act. This prompted the Civil Aeronautics Administration to recommend legislation which would have the effect of extending similar settlement authority for claims for personal property losses suffered employees of all Federal agencies.

The provisions of the Military Personnel and Civilian Employees Claims Act of 1964 granted authority for all agencies of the govern-

ment to settle up to $6,500 for personal property losses suffered by Government personnel incident to their service. In 1965, the Act was amended to permit the military departments to settle claims up to $10,000.[1] In 1968, the Act was amended to cover District of Columbia employees.[2] In 1970, a requirement for an annual report to Congress was deleted.[3] In 1974 the limit for payment of claims was increased to $15,000 as to all agencies of Government.[4]

Claims Administration Under the Act

The requirements and purposes referred to in the discussion of the 1945 law have been reflected in the administration of the current statute. The regulations implementing the present statute do not provide for a payment for all property lost and it is clear that the statute and the relevant regulations do not provide the equivalent of full insurance of all property that might be subject to loss or damage. A fundamental aspect of claims settlement under this authority and under this bill is that the property must have a reasonable relevance to the service and activity of the employee or military member in the performance of his duties. At the Subcommittee hearing, the Air Force testimony emphasized that the Defense Department regulations implementing the statutory mandate require that the quantity and types of property lost be "reasonable, useful or proper under the circumstances." The services have jointly adopted maximum amounts payable for jewelry, antiques, stereos, collections, paintings and other valuable items. Due care is required of military and civilian members in safeguarding their personal effects, and where a claimant is contributorily negligent in causing the loss, no award is made. Depreciation is deducted consistent with insurance industry standards to arrive at the true value of items claimed. Substantiation of personal claims is an absolute requirement, and all the military services have well-defined, uniform procedures and trained legal personnel with years of experience in investigating and adjudicating these claims. Testimony received from the Coast Guard and Department of State confirms that the Act is being administered throughout the executive branch with fairness to claimants and due concern for the protection of public funds.

Private Insurance Alternative

During the hearing on the proposed legislation, the Subcommittee explored the possibility that, as an alternative to raising the maximum limit from $15,000, military and civilian personnel purchase insurance to adequately protect themselves from damage or loss which exceeds that amount. The testimony of the Air Force witness, Major General Bruton, and the letter accompanying the Air Force's legislative proposal clearly demonstrated the inadequacy of this alternative. Looking at the most attractive private insurance plan which might be available, the cost in premium payments to military personnel would be millions of dollars in excess of the relatively modest cost of the increase made

[1] Public Law 89–185, § 3(b), September 16, 1965, 72 Stat. 789.
[2] Public Law 90–561, October 12, 1968, 82 Stat. 998.
[3] Public Law 91–311, July 8, 1970, 84 Stat. 412.
[4] Public Law 93–455, § 1, October 18, 1974, 88 Stat. 2381.

by the proposed legislation. Accordingly, the Committee is satisfied that this is not a feasible alternative to the increase in the maximum limit to $25,000.

Private Relief Legislation Alternative

The Subcommittee recognized that while private relief legislation is a theoretical alternative, the fact is that such legislation in the area of claims under the Act are not often favorably considered. The reasons are that such legislation is preferential by its nature and thus inherently unfair. It is also contrary to the basic philosophy of the Act which makes administrative settlement of claims "final and conclusive." In view of this, the Committee agrees that private relief legislation is not a realistic alternative to the proposed legislation.

Subcommittee Amendment

Section 3(b) of S. 1739 provides for a form of retroactivity with regard to the increase in the maximum limit to $25,000. Its effect is to permit, upon written request of a claimant made within one year after enactment of the legislation, reconsideration of a claim which had previously been settled in the amount of $15,000 solely because of the statutory limit of $15,000. Such claims could then be settled up to the new limit of $25,000. No similar provision was included in the legislative proposal submitted by the Department of the Air Force. Based on testimony received at the hearing and the subcommittee's consideration, it was concluded that this provision is inappropriate. The full Committee agrees and the bill is reported with an amendment striking out subsection (b) of section 3 and striking out "(a)" at the beginning of subsection (a) of section 3.

Conclusion

From the testimony presented at the hearing on October 19, 1981, the information supplied subsequent to that hearing, and the legislative proposal forwarded by the Department of the Air Force on October 16, 1981, the Senate Judiciary Committee concludes that there is a clear basis and need for the proposed legislation. It is urged that S. 1739, as amended, be favorably considered.

Proposal of the Department of the Air Force

Following and made a part of this report, is the legislative proposal on this matter submitted by the Department of the Air Force.

Department of the Air Force,
Washington, D.C., October 16, 1981.

Hon. George Bush,
President of the U.S. Senate,
Washington, D.C.

Dear Mr. President: There is forwarded herewith a draft of legislation, "To amend the Military Personnel and Civilian Employees' Claims Act of 1964 to increase the limit on payments for damage to, or loss of personal property incident to service."

The proposed legislation is part of the Department of Defense Legislative Program for the 97th Congress. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Air Force has been designated the representative of the Department of Defense for this proposed legislation. The Department of the Air Force, on behalf of the Department of Defense, recommends that this proposed legislation be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The purpose of the proposed legislation is to amend section 3 of the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 241) (hereinafter "the Act") to increase the limit on payments from $15,000 to $25,000 for loss of, or damage to personal property incident to service.

The proposed legislation would raise the present limitations on payment for claims under the Act to a level consistent with rising costs of repair and replacement of personal property. These increased costs are due primarily to the general inflationary trend that has occurred over the last several years.

A reliable method of calculating the increasing costs of repair and replacement of personal property is to make reference to the Consumer Price Index (CPI). In May 1964, when the payment limit under the Act was $10,000, the CPI, according to the United States Bureau of Labor Statistics, was 92.7. In October 1974, when the payment limit under the Act was increased to $15,000 the CPI was 153.0. In January 1981, the CPI–U (Consumer Price Index for all Urban Consumers) was 260.5, a 70.3 percent increase since October 1974. The payment limit of $15,000 in January 1981 is equivalent to $8,810 in October 1974 purchasing power. An increase in the payment limit to $25,539 would be needed to match the October 1974 purchasing power of $15,000 in January 1981.

During the 96th Congress, when the Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary held hearings on H.R. 6086 and H.R. 6099, bills which were concerned with the payment limits of the Act, several questions were raised about whether military and civilian personnel should purchase insurance to adequately protect themselves from damage or loss to their personal property incident to their Government service. Since that time, the Air Force has done considerable study regarding the availability and costs of such insurance.

Two major companies, which insure military personnel almost exclusively, will provide coverage only for lost or destroyed property. That is, they will not cover damage. Two other companies will write an "all risks" policy, but the quoted premiums for "all risks in transit" policies ranged from $500 to $750 for $25,000 coverage. The military member or civilian employee would, of course, be required to purchase insurance and pay such premiums each time he was reassigned and his personal property was shipped. The policies covering loss but not damage are clearly inadequate as substantial claims often arise from

"damages," such as flood and resulting mildew, rodent infestation, and moving van accidents. Yet, the premiums of $500–$750 for "all risks" coverage are more than most anyone is willing to pay. For enlisted personnel and junior officers, these premiums are more than most are able to pay.

One insurance company has made a $15,000 deductible policy available to Army and Air Force Exchange Service (AAFES) personnel as a pilot program. This program extends to approximately 400 moves a year. Under this pilot program, the premiums for $25,000 coverage (with $15,000 deductible) is $34 for each move in the United States and $50 for each move overseas, when coverage is based on cash value or depreciated value. If coverage is based on replacement value, the premiums are $96.50 for each move in the United States and $112.50 for each move overseas. Based upon the assumptions that this pilot program were to be made permanent and that the program were to be made available by the insurer at the same rates to all military personnel, it is possible to project the cost of such a program to Air Force members. In Fiscal Year (FY) 1980, 315,000 permanent change of station moves occurred in the Air Force. Based on the premiums presently charged under the pilot AAFES program, if all 315,000 moves had been privately insured for the full $25,000 coverage, the total cost to Air Force members subject to permanent change of station moves in FY 1980 would have exceeded $15 million.

Realistically, this full cost would not have been incurred because not all of these moves would have involved property valued in excess of $15,000, and consequently insurance would not have been purchased in all cases. It is not possible to establish with any certainty the number of moves that did involve property valued at more than $15,000. However, of the 315,000 moves, about 50,000 involved married personnel on overseas assignment and about 60,000 involved married personnel moving in the United States. Considering only these moves by married personnel (thus excluding all moves by single members), and assuming that each of the married personnel insured their goods for $25,000, the total cost of this private insurance would have been almost $4.5 million. In contrast to this, during FY 1980 only 16 personnel claims submitted in the Air Force were adjudicated in excess of the present limit of $15,000. If the statutory limit had been $25,000, the additional cost of compensating these claimants would have been $72,647.

It could well be argued that even the estimated cost of $4.5 million for Air Force personnel is exaggerated since many of the married personnel would not purchase additional insurance. Unfortunately, this argument may be correct; however, the argument is also a reflection of the basic problem with requiring private insurance as the source of protection from loss or damage incident to federal service. The chances that any one person will have a catastrophic loss are so small that it is probable that a high percentage of military personnel, especially enlisted and junior officer personnel, would take the gamble that they would not suffer such a loss and thus would not purchase the insurance.

When the tremendous difference in total premium cost just for Air Force personnel ($4.5 million) is compared to the cost to the Govern-

ment to serve as insurer at the $25,000 level proposed by this legislation just for Air Force personnel ($72,647), it becomes clear that the Government can provide a tremendously important benefit at very low cost. Although the cost to the Government would certainly increase as inflation brings more claims into the over $15,000 category, the estimated cost for all of the Department of Defense for FY 1981 is only $500,000, and it is estimated that this would increase over a five year period to an annual DOD-wide cost of only $480,000.

Although these projected Government costs are not large, the value to military personnel is enormous and could mean the difference between the bothersome problem of having to repair or replace personal property and the devastating, uncompensated loss of such property. Now, as in 1974, the assurance that military and civilian personnel will not face such a tragic loss without compensation from the Government should not be lost to the effects of inflation. Private insurance is not a viable alternative to statutory claims protection at the $25,000 level

Raising the limit to $25,000 would serve to maintain the level of protection that was previously considered appropriate by the Congress for the type of property covered by the Act. With respect to the philosophy of the Act, nothing has changed since the last increase in the payment ceiling seven years ago. The House Judiciary Committee Report at the time of the 1974 increase (House Report 93–1320, August 22, 1974, page 3) states that the increase would "serve to maintain the level of protection that was previously considered appropriate for this property by Congress as a matter of fairness, support for morale, of Government personnel. As to the Armed Forces such protection would be a further inducement for entering and continuing membership in the Armed Forces."

COST AND BUDGET DATA

Based on past experience, it is estimated that passage of the proposed legislation would result in added costs to the Department of Defense of between $300,000 and $480,000 annually over the next five fiscal years, or a cumulative total of approximately $1.95 million for that period.

Sincerely,

E. C. ALDRIDGE, Jr.,
Acting Secretary of the Air Force.

Attachment.

A BILL to amend the Military Personnel and Civilian Employees' Claims Act of 1964 to increase from $15,000 to $25,000 the maximum amount that the United States may pay in settlement of a claim under that Act

Be it enacted that the Senate and House of Representatives of the United States of America in Congress assembled, That (a) sections 3(a)(1) and 3(b)(1) of the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 241 (a)(1) and (b)(1)), are amended by striking out "$15,000" and inserting in lieu thereof "$25,000".

(b) The amendments made by this Act shall apply only to claims arising on or after the date of enactment.

CHANGES IN EXISTING LAW

In compliance with paragraph (4) of rule XXIX of the Rules of the Senate; changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed by black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

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CHAPTER 6. DEBTS DUE BY, OR TO, THE UNITED STATES

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§ 241. Settlement payments

(a) Authority of heads of military departments and Secretary of the Treasury; claims by members of uniformed services; limitation; replacement of property in kind; authority of Department of Defense over claims of civilian employees; payments to survivors.

(1) Under such regulations as the Secretary of a military department, or the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a part of the Navy, may prescribe, he or his designee may settle and pay a claim arising after August 31, 1964, against the United States for not more than [$15,000] *$25,000* made by a member of the uniformed services under the jurisdiction of that department or the Coast Guard or by a civilian officer or employee of that department or the Coast Guard, for damage to, or loss of, personal property incident to his service. If the claim is substantiated and the possession of that property is determined to be reasonable, useful, or proper under the circumstances, the claim may be paid or the property replaced in kind. This subsection does not apply to claims settled before August 31, 1964.

(2) Under such regulations as the Secretary of Defense may prescribe, he or any officer designated by him has the same authority as the Secretary of a military department with respect to a claim by a civilian employee of the Department of Defense not otherwise covered by this subsection for damage to, or loss of personal property incident to, his service.

(3) If a person named in this subsection is dead, the Secretary of the military department concerned or his designee, or the Secretary of the Treasury or his designee, or the Secretary of Defense or his designee, as the case may be, may settle and pay any claim made by the decedent's surviving (1) spouse, (2) children, (3) father or mother, or both, or (4) brothers or sisters, or both, that arose before, concurrently with, or after the decedent's death and is otherwise covered by this subsection. Claims of survivors shall be settled and paid in the order named.

(b) Members of non-military departments; limitation; replacement of property in kind; payments to survivors

(1) Subect to any policies the President may prescribe to effectuate the purposes of this subsection and under such regulations as the head of an agency, other than a military department, the Secretary of Transportation with respect to the Coast Guard, or the Department of Defense, may prescribe, he or his designee may settle and pay a claim arising after October 18, 1974, against the United States for not more than [$15,000] *$25,000* made by a member of the uniformed services under the jurisdiction of that agency or by a civilian officer or employee of that agency, for damage to, or loss of, personal property incident to his service. If the claim is substantiated and the possession of that property is determined to be reasonable, uesful, or proper under the circumstances, the claim may be paid or the property replaced in kind. This subsection does not apply to claims settled before October 18, 1974.

(2) If a person named in this subsection is dead, the head of the agency concerned, or his designee, may settle and pay any claim made by the decedent's surviving (1) spouse, (2) children, (3) father or mother, or both, or (4) brothers or sisters, or both, that arose before concurrently with, or after the decedent's death and is otherwise covered by this subsection. Claims of survivors shall be settled and paid in the order named.

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Cost Estimate

The Congressional Budget Office's cost estimate for this legislation is set forth as follows:

Regulatory and Privacy Impact Statement

Pursuant to Senate Rules, the committee finds that enactment of this legislation will have no undue or burdensome impact on existing requirements and will not require the issuance of additional regulations or paperwork for its implementation.

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